



General Assembly

Substitute Bill No. 444

February Session, 2010

* ____SB00444FIN__040110__ *

**AN ACT CONCERNING REVISIONS TO THE NONRESIDENT
CONTRACTOR BOND STATUTE.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subdivision (7) of section 12-430 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective July*
3 *1, 2010*):

4 [(7) (A) As used in this section, (i) "nonresident contractor" means a
5 contractor who does not maintain a regular place of business in this
6 state; (ii) "regular place of business" means any bona fide office,
7 factory, warehouse or other space in this state at which a
8 contractor is doing business in its own name in a regular and
9 systematic manner, and which place is continuously maintained,
10 occupied, and used by the contractor in carrying on its business
11 through its employees regularly in attendance to carry on the
12 contractor's business in the contractor's own name, except that
13 "regular place of business" does not include a place of business for a
14 statutory agent for service of process, or a temporary office or
15 location used by the contractor only for the duration of the contract,
16 whether or not at the site of construction, or an office maintained,
17 occupied and used by a person affiliated with the contractor; (iii)
18 "contract price" means the total contract price, including deposits,
19 amounts held as retainage, costs for any change orders, or charges for

20 add-ons; and (iv) "person doing business with a nonresident
21 contractor" does not include an owner or tenant of real property used
22 exclusively for residential purposes and consisting of three or fewer
23 dwelling units, in one of which the owner or tenant resides, provided
24 each nonresident contractor doing business with such owner or
25 tenant shall be required to comply with the bond requirements under
26 subparagraph (F) of this subdivision.

27 (B) Any person doing business with a nonresident contractor and
28 making payments of the contract price to such nonresident contractor
29 shall deduct and withhold from such payments an amount of five per
30 cent of such payments, unless such nonresident contractor has
31 furnished a certificate of compliance as described in subparagraph (E)
32 of this subdivision. The amounts so required to be deducted and
33 withheld shall be paid over to the commissioner by the last day of the
34 month following the calendar quarter following the calendar quarter in
35 which the first payment to the nonresident contractor is made, and
36 every calendar quarter thereafter. Each such payment to the
37 commissioner shall be accompanied by a form prescribed by the
38 commissioner. The amount required to be deducted and withheld
39 from the nonresident contractor, when so deducted and withheld, shall
40 be held to be a special fund in trust for the state. No nonresident
41 contractor shall have any right of action against a person deducting
42 and withholding under this subdivision with respect to any moneys
43 deducted and withheld and paid over to the commissioner in
44 compliance with or intended compliance with this subdivision.

45 (C) A nonresident contractor shall request, in writing, that the
46 Commissioner of Revenue Services audit the records of such
47 contractor for a project for which amounts were deducted and
48 withheld from such contractor under subparagraph (B) of this
49 subdivision. If such request is not made within three years after the
50 date the final payment of such amounts was made to the
51 commissioner, such contractor waives the right to request such audit
52 and claim a refund of such amounts. The commissioner shall, after
53 receipt of such request, conduct an audit and issue to the nonresident

54 contractor a certificate of no tax due or a certificate of tax due from
55 the nonresident contractor. Not later than ninety days after the
56 issuance of a certificate of no tax due, the commissioner shall
57 return to the nonresident contractor the amounts deducted and
58 withheld from such contractor and paid over to the commissioner.
59 Upon issuance of a certificate of taxes due, the commissioner may
60 return to the nonresident contractor the amount by which the
61 amounts deducted and withheld and paid over to the
62 commissioner under subparagraph (B) of this subdivision exceed
63 the amount of taxes set forth in the certificate, together with the
64 interest and penalties then assessed.

65 (D) When a person doing business with the nonresident contractor
66 pays over to the Commissioner of Revenue Services amounts deducted
67 and withheld pursuant to subparagraph (B) of this subdivision, such
68 person shall not be liable for any claim of the nonresident contractor
69 for such amounts or for any claim of the commissioner for any taxes
70 of the nonresident contractor arising from the activities of the
71 nonresident contractor on the project for which the amounts were
72 paid over. Such payment shall not relieve the person doing business
73 with the nonresident contractor of such person's liability for use
74 taxes due on purchases of services from such nonresident contractor.

75 (E) When a nonresident contractor enters into a contract with the
76 state, said contractor shall provide the Labor Department with
77 evidence demonstrating compliance with the provisions of chapters
78 567 and 568, the prevailing wage requirements of chapter 557 and any
79 other provisions of the general statutes related to conditions of
80 employment.

81 (F) Not later than one hundred twenty days after the
82 commencement of the contract, or thirty days after the completion of
83 the contract, whichever is earlier, a nonresident contractor may (i)
84 furnish a guarantee bond in a sum equivalent to five per cent of the
85 contract price, or (ii) deposit with the commissioner a cash bond in a
86 sum equal to five per cent of the contract price, in lieu of the

87 requirements contained in subparagraph (B) of this subdivision. The
88 commissioner may accept such bond on such terms and conditions as
89 the commissioner may require, and upon acceptance of such bond,
90 shall issue a certificate of compliance to the contractor. The provisions
91 of subparagraph (C) of this subdivision shall apply to such bond, upon
92 completion of the contract, in the same manner as such provisions
93 apply to amounts paid over under subparagraph (B) of this
94 subdivision.

95 (G) Upon the furnishing of a certificate of compliance by the
96 nonresident contractor to the person doing business with a
97 nonresident contractor, such person shall not be liable for any claim of
98 the commissioner for any taxes of the nonresident contractor arising
99 from the activities of such contractor on the project for which the bond
100 was provided. Such certificate of compliance shall not relieve the
101 person doing business with the nonresident contractor of such person's
102 liability for use taxes due on purchases of services from such
103 nonresident contractor.

104 (H) If any person doing business with a nonresident contractor fails
105 to deduct and withhold and pay over to the commissioner amounts
106 under subparagraph (B) of this subdivision, or fails to obtain a
107 certificate of compliance from the nonresident contractor pursuant to
108 subparagraph (G) of this subdivision, such person shall be personally
109 liable for payment of any taxes of the nonresident contractor arising
110 from the activities of such contractor on the project for which such
111 amounts or certificate were required.]

112 (7) (A) As used in this subdivision:

113 (i) "Nonresident contractor" means a contractor or subcontractor
114 who does not maintain a regular place of business in this state;

115 (ii) "Resident contractor" means a contractor or subcontractor who
116 maintains a regular place of business in this state;

117 (iii) "Listed contractor" means a nonresident contractor or

118 subcontractor whose name appears on the list of contractors or
119 subcontractors published by the commissioner pursuant to
120 subparagraph (I) of this subdivision;

121 (iv) "Unlisted contractor" means a nonresident contractor or
122 subcontractor whose name does not appear on the list of contractors or
123 subcontractors published by the commissioner pursuant to
124 subparagraph (I) of this subdivision;

125 (v) "Subcontractor" means a person who is engaged in contracting
126 real property work and who contracts with a prime or general
127 contractor to perform all or any part of the contract of the prime or
128 general contractor or who contracts with a subcontractor who has
129 contracted to perform any part of the contract entered into by the
130 prime or general contractor;

131 (vi) "Prime or general contractor" includes any person who contracts
132 with the owner, lessee or other person having authority to enter into a
133 contract involving the premises or property which is the subject matter
134 of the contract, to perform services or furnish materials, or both, for the
135 construction, alteration or improvement of any real property or
136 project, or any person who owns or leases real estate for the purpose of
137 developing the real estate other than for his or her own occupancy, and
138 who, in the development of the real estate, contracts, alters or makes
139 improvements on it;

140 (vii) "Regular place of business" means any bona fide office, factory,
141 warehouse or other space in this state at which a contractor is doing
142 business in its own name in a regular and systematic manner, and
143 which place is continuously maintained, occupied and used by the
144 contractor in carrying on its business through its employees regularly
145 in attendance to carry on the contractor's business in the contractor's
146 own name, except that "regular place of business" does not include a
147 place of business for a statutory agent for service of process, or a
148 temporary office or location used by the contractor only for the
149 duration of the contract, whether or not at the site of construction, or

150 an office maintained, occupied and used by a person affiliated with the
151 contractor;

152 (viii) "Contract price" means the total contract price, including
153 deposits, amounts held as retainage, costs for any change orders or
154 charges for add-ons;

155 (ix) "Person doing business with an unlisted contractor" does not
156 include an owner or tenant of real property used exclusively for
157 residential purposes and consisting of three or fewer dwelling units, in
158 one of which the owner or tenant resides;

159 (x) "Commissioner" means the Commissioner of Revenue Services;

160 (xi) "Department" means the Department of Revenue Services; and

161 (xii) "Certificate of compliance" means a certificate issued to an
162 unlisted subcontractor by the commissioner, exonerating such
163 subcontractor from sales or use taxes owed by such subcontractor
164 under this chapter and any income tax withholding owed by such
165 subcontractor pursuant to chapter 229, but only to the extent that such
166 taxes arise from the activities of such subcontractor on the project for
167 which such certificate was required.

168 (B) Any person doing business with a prime or general contractor
169 who is an unlisted contractor shall obtain proof that such contractor
170 has posted with the commissioner a valid and binding bond with a
171 surety company authorized to do business in this state in an amount
172 equal to five per cent of the contract price, to secure the payment of
173 any sums due under this chapter either from such contractor or from
174 any subcontractor who enters into a contract with such contractor or
175 any subcontractor thereto to perform any part of the contract entered
176 into by such contractor or subcontractor thereto.

177 (C) (i) Every prime or general contractor who is an unlisted
178 contractor shall post with the commissioner a valid and binding bond
179 with a surety company authorized to do business in this state in an

180 amount equal to five per cent of the contract price, to secure the
181 payment of any sums due under this chapter either from such
182 contractor or from any subcontractor who enters into a contract with
183 such contractor to perform any part of the contract entered into by
184 such contractor. The commissioner shall release such contractor from
185 its obligations under such bond if it has been established, to the
186 commissioner's satisfaction, that such contractor has met the
187 requirements of either clause (ii) or (iii) of this subparagraph.

188 (ii) If a prime or general contractor who is an unlisted contractor
189 establishes, to the satisfaction of the commissioner and by submitting
190 such documentation, including any forms prescribed by the
191 commissioner, as the commissioner deems necessary, that such
192 contractor has paid all of the taxes that it owes in connection with the
193 contract and that its subcontractors who are unlisted contractors have
194 paid all of the taxes that they owe in connection with the contract, the
195 commissioner shall release such contractor from its obligations under
196 the bond.

197 (iii) (I) If a prime or general contractor who is an unlisted contractor
198 establishes, to the satisfaction of the commissioner and by submitting
199 such documentation, including any forms prescribed by the
200 commissioner, as the commissioner deems necessary, that such
201 contractor first, has paid all of the taxes that it owes in connection with
202 the contract, second, has held back an amount equal to five per cent of
203 the payments being made by such contractor in connection with the
204 contract to its subcontractors who are unlisted contractors, and third,
205 has complied with the provisions of either subclause (V) or (VI) of this
206 clause, as the case may be, the commissioner shall release such
207 contractor from its obligations under the bond.

208 (II) Every prime or general contractor who is an unlisted contractor
209 and doing business with a subcontractor who is an unlisted contractor
210 shall hold back an amount equal to five per cent of such payments
211 otherwise required to be made to such subcontractor until such
212 subcontractor furnishes such contractor with a certificate of

213 compliance, as described in this clause, issued by the commissioner to
214 such subcontractor, authorizing the full or partial release of the
215 amount held back from such payments to such subcontractor. Such
216 contractor shall provide written notice of the requirement to hold back
217 to each subcontractor who is an unlisted contractor no later than the
218 time of commencement of work under the contract by such
219 subcontractor.

220 (III) The amount required to be held back from a subcontractor who
221 is an unlisted contractor, when so held back, shall be held to be a
222 special fund in trust for the state. No such subcontractor shall have any
223 right of action against a prime or general contractor holding back
224 under this subdivision with respect to any amount held back in
225 compliance with or intended compliance with this subdivision.

226 (IV) Any subcontractor who is an unlisted contractor shall, upon the
227 completion of its work under the contract, request, in writing, the
228 issuance of a certificate of compliance by the commissioner to such
229 subcontractor. Such subcontractor shall submit, with such request,
230 such documentation, including any forms prescribed by the
231 commissioner, as the commissioner deems necessary. The
232 commissioner shall, after receipt of such request and such required
233 documentation, review the documentation in the context of generally
234 accepted construction industry cost guidelines for the scope and type
235 of construction project. Not later than one hundred twenty days after
236 the receipt by the commissioner of the required documentation, the
237 commissioner shall either issue a certificate of compliance authorizing
238 the full or partial release of an amount held back from payments being
239 made to such subcontractor, or shall be deemed to have issued such
240 certificate.

241 (V) If the commissioner issues a certificate of compliance
242 authorizing a full release of the amount held back from a subcontractor
243 who is an unlisted contractor, the prime or general contractor holding
244 back such amount shall pay over such amount to such subcontractor.
245 Such contractor shall not be liable for any claim of the commissioner

246 for any taxes of such subcontractor arising from the activities of such
247 subcontractor on the project.

248 (VI) If the commissioner issues a certificate of compliance
249 authorizing a partial release of the amount held back from a
250 subcontractor who is an unlisted contractor, the prime or general
251 contractor holding back such amount shall pay over the released
252 amount to such subcontractor, and shall pay over the unreleased
253 amount to the commissioner. When such contractor pays over to the
254 commissioner an amount held back in accordance with this
255 subparagraph, such contractor shall not be liable for any claim of such
256 subcontractor for such amount or for any claim of the commissioner
257 for any taxes of such subcontractor arising from the activities of such
258 subcontractor on the project for which the amount was paid over. If
259 the amount that such contractor is required to pay over to the
260 commissioner is not paid over on or before the thirtieth day after the
261 date of mailing of such written notice, such contractor shall be liable
262 for a penalty equal to ten per cent of such amount. The amount that
263 such contractor is required to pay over to the commissioner, and the
264 penalty thereon, may be collected under the provisions of section 12-
265 35.

266 (VII) The issuance to a subcontractor who is an unlisted contractor
267 of a certificate of compliance authorizing a partial release of an amount
268 held back shall be treated in the same manner as the issuance to such
269 subcontractor of a notice of assessment under section 12-415.

270 (VIII) The issuance to a subcontractor who is an unlisted contractor
271 of a certificate of compliance shall not preclude the commissioner, in
272 the exercise of the commissioner's authority under this chapter, from
273 examining the tax returns, and books and records, of such
274 subcontractor and, if appropriate and other than in connection with
275 the project for which the certificate of compliance was issued, from
276 making an assessment against such subcontractor.

277 (D) (i) Every prime or general contractor who is either a resident

278 contractor or a listed contractor and doing business with a
279 subcontractor who is an unlisted contractor shall hold back an amount
280 equal to five per cent of such payments otherwise required to be made
281 to such subcontractor until such subcontractor furnishes such
282 contractor with a certificate of compliance, as described in this
283 subparagraph, issued by the commissioner to such subcontractor,
284 authorizing the full or partial release of the amount held back from
285 such payments to such subcontractor. Such contractor shall provide
286 written notice of the requirement to hold back to each subcontractor
287 who is an unlisted contractor no later than the time of commencement
288 of work under the contract by such subcontractor.

289 (ii) The amount required to be held back from a subcontractor who
290 is an unlisted contractor, when so held back, shall be held to be a
291 special fund in trust for the state. No such subcontractor shall have any
292 right of action against a prime or general contractor holding back
293 under this subparagraph with respect to any amount held back in
294 compliance with or intended compliance with this subparagraph.

295 (iii) A subcontractor who is an unlisted contractor shall, upon the
296 completion of its work under the contract, request, in writing, the
297 issuance of a certificate of compliance by the commissioner to such
298 subcontractor. Such subcontractor shall submit, with such request,
299 such documentation, including any forms prescribed by the
300 commissioner, as the commissioner deems necessary. The
301 commissioner shall, after receipt of such request and such required
302 documentation, review the documentation in the context of generally
303 accepted construction industry cost guidelines for the scope and type
304 of construction project. Not later than one hundred twenty days after
305 the receipt by the commissioner of the required documentation, the
306 commissioner shall either issue a certificate of compliance authorizing
307 the full or partial release of an amount held back from payments being
308 made to such subcontractor, or shall be deemed to have issued such
309 certificate.

310 (iv) If the commissioner issues a certificate of compliance

311 authorizing a full release of the amount held back from a subcontractor
312 who is an unlisted contractor, the prime or general contractor holding
313 back such amount shall pay over such amount to such subcontractor.
314 Such contractor shall not be liable for any claim of the commissioner
315 for any taxes of such subcontractor arising from the activities of such
316 subcontractor on the project.

317 (v) If the commissioner issues a certificate of compliance authorizing
318 a partial release of the amount held back from a subcontractor who is
319 an unlisted contractor, the prime or general contractor holding back
320 such amount shall pay over the released amount to such subcontractor,
321 and shall pay over the unreleased amount to the commissioner. When
322 such contractor pays over to the commissioner an amount held back in
323 accordance with this subparagraph, such contractor shall not be liable
324 for any claim of such subcontractor for such amount or for any claim of
325 the commissioner for any taxes of such subcontractor arising from the
326 activities of such subcontractor on the project for which the amount
327 was paid over. If the amount that such contractor is required to pay
328 over to the commissioner is not paid over on or before the thirtieth day
329 after the date of mailing of such written notice, such contractor shall be
330 liable for a penalty equal to ten per cent of such amount. The amount
331 that such contractor is required to pay over to the commissioner, and
332 the penalty thereon, may be collected under the provisions of section
333 12-35.

334 (vi) The issuance to a subcontractor who is an unlisted contractor of
335 a certificate of compliance authorizing a partial release of an amount
336 held back shall be treated in the same manner as the issuance to such
337 subcontractor of a notice of assessment under section 12-415.

338 (vii) The issuance to a subcontractor who is an unlisted contractor of
339 a certificate of compliance shall not preclude the commissioner, in the
340 exercise of the commissioner's authority under this chapter, from
341 examining the tax returns, and books and records, of such
342 subcontractor and, if appropriate and other than in connection with
343 the project for which the certificate of compliance was issued, from

344 making an assessment against such subcontractor.

345 (E) When a nonresident contractor enters into a contract with the
346 state, such contractor shall provide the Labor Department with
347 evidence demonstrating compliance with the provisions of chapters
348 567 and 568, the prevailing wage requirements of chapter 557 and any
349 other provisions of the general statutes related to conditions of
350 employment.

351 (F) (i) If any person doing business with an unlisted prime or
352 general contractor fails to comply with the provisions of this
353 subdivision, such person shall, except as otherwise provided by clause
354 (ii) of this subparagraph, be personally liable for payment of any taxes
355 of the unlisted contractor arising from the activities of such contractor
356 on the project. For purposes of this subparagraph, "taxes of the
357 unlisted contractor" means any sales or use taxes owed by the unlisted
358 contractor under this chapter and any income tax withholding owed
359 by the unlisted contractor pursuant to chapter 229.

360 (ii) Except as otherwise provided in clause (iii) of this subparagraph,
361 the personal liability of any person doing business with an unlisted
362 prime or general contractor for payment of any taxes of such unlisted
363 contractor arising from the activities of such contractor on the project
364 shall not exceed an amount equal to five per cent of the contract price
365 required to be paid to such unlisted contractor.

366 (iii) Notwithstanding the provisions of clause (ii) of this
367 subparagraph, any person doing business with an unlisted prime or
368 general contractor shall, in addition to such person's personal liability
369 under clause (ii) of this subparagraph, remain liable for use taxes due
370 on purchases of services from such unlisted contractor in connection
371 with the project.

372 (G) The provisions of this subdivision shall not apply to any
373 contract where the contract price for the entire project is less than two
374 hundred fifty thousand dollars.

375 (H) (i) The commissioner shall include in the list of contractors or
376 subcontractors the name of every nonresident contractor or
377 subcontractor who (I) has been registered for all applicable taxes with
378 the department for at least three years preceding the contract; and (II)
379 has filed all required tax returns with the department and has no
380 outstanding tax liabilities to the department.

381 (ii) The commissioner shall include in the list of contractors or
382 subcontractors the name of every nonresident contractor or
383 subcontractor not otherwise eligible to be included in such list
384 pursuant to clause (i) of this subparagraph who (I) is registered for all
385 applicable taxes with the department; (II) has filed all required tax
386 returns with the department and has no outstanding tax liabilities to
387 the department; and (III) posts with the commissioner a valid and
388 binding bond with a surety company authorized to do business in this
389 state in an amount determined by the commissioner, as provided in
390 subdivision (1) of section 12-430.

391 (I) Notwithstanding the provisions of section 12-15, the
392 commissioner shall publish on the Internet web site of the department
393 the name of every nonresident contractor or subcontractor eligible to
394 be listed pursuant to clause (i) or (ii) of subparagraph (H) of this
395 subdivision. The commissioner shall update such list as necessary, but
396 at least annually, in order to correct mistakes, to keep the list current
397 and in conformity with this subdivision, and to add or delete the
398 names of contractors or subcontractors.

399 (J) Notwithstanding the provisions of section 12-15, the
400 commissioner may disclose, to a person doing business with a
401 subcontractor who is an unlisted contractor and otherwise required by
402 this subdivision to hold back an amount from payments being made to
403 such subcontractor, whether a certificate of compliance has been
404 requested by, or issued to, such subcontractor by the commissioner,
405 and the commissioner may disclose a copy of such certificate to such
406 person doing business with such subcontractor.

407 (K) Notwithstanding the provisions of section 12-15, the
 408 commissioner may disclose to a person doing business with a prime or
 409 general contractor who is an unlisted contractor, whether a valid and
 410 binding bond with a surety company authorized to do business in this
 411 state has been posted with the commissioner by such prime or general
 412 contractor.

413 (L) Notwithstanding the provisions of section 12-15, the
 414 commissioner may, upon request, verify whether or not any contractor
 415 or subcontractor is a resident contractor.

This act shall take effect as follows and shall amend the following sections:		
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Section 1	July 1, 2010	12-430(7)
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Statement of Legislative Commissioners:

In subparagraphs (B), (C)(i), (H)(ii) and (K), the phrase "good and valid bond" was changed to "valid and binding bond" for clarity and consistency with the general statutes.

FIN *Joint Favorable Subst.-LCO*